

SEP 14 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISMAEL BELMAN, aka Humberto Casas,
Jr., Ruben Belman Huijon, Humberto
Casas, Ruben Belman,

Defendant - Appellant.

No. 05-50935

D.C. No. CR-05-00348-GAF

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Submitted September 11, 2006^{**}

Before: PREGERSON, T.G. NELSON and GRABER, Circuit Judges.

Ismael Belman appeals from the sentence imposed following his guilty-plea conviction for making a false statement in a passport application, in violation of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

18 U.S.C. § 1542, and being an illegal alien found in the United States following deportation, in violation of 18 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

We reject Belman's contention that 18 U.S.C. § 1326(b) is unconstitutional. *See United States v. Beng-Salazar*, 452 F.3d 1088, 1091 (9th Cir. 2006). We also reject the contention that the district court abused its discretion by imposing as a condition of supervised release a requirement that he report to his probation officer within 72 hours of entering the United States. *See United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (9th Cir. 2006).

Belman contends that the condition of supervised release requiring him to submit to polygraph testing is unconstitutional. Because this condition must be construed as permitting Belman to retain his Fifth Amendment rights during any polygraph testing, this contention is unpersuasive. *See United States v. Weber*, 451 F.3d 552, 568 n.17 (9th Cir. 2006).

Belman contends that the district court erred by imposing conditions of supervised release - requiring him to submit to plethysmograph testing and to take any medicine prescribed to him - without the necessary evidentiary record, justification, and findings. We agree, and we vacate the sentence and remand to

the district court for further proceedings consistent with *Weber*, 451 F.3d at 568-70 and *United States v. Williams*, 356 F.3d 1045, 1055-57 (9th Cir. 2004).

Finally, in accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to § 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

VACATED and REMANDED.